ATTORNEY FOR APPELLANT:

DAVID M. PAYNE
Ryan & Payne
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

FRANCES H. BARROW
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CYNTHIA E. PAYNE,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0602-EX-151
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and FEDERATED PUBLICATIONS, INC. GANCO,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE INDIANA
DEPARTMENT OF WORKFORCE DEVELOPMENT
The Honorable Steven F. Bier, Chairperson
Cause No. 05-R-03712

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Cynthia E. Payne appeals the decision of the Indiana Department of Workforce Development ("IDWD") that she was ineligible for unemployment compensation benefits because she voluntarily left her employment without good cause in connection with the work.

We affirm.

ISSUES

1. Whether procedural flaws entitle Payne to a new hearing on the issue.

2. Whether the board erred when it determined that Payne did not establish that her voluntary termination of employment was based on "good cause in connection with the work."

FACTS

On November 18, 2004, Payne began her employment with Federated Publications, Inc./Ganco ("Federated") as local news editor at the Chronicle Tribune daily newspaper in Marion. Her job duties were to assign stories to reporters and edit their copy. On May 20, 2005, she resigned her position.

Payne applied for unemployment compensation benefits. Apparently, an IDWD claims deputy initially found Payne eligible for benefits. Federated appealed that determination on July 5, 2005. An administrative hearing was scheduled for August 12, 2005. However, on July 7, 2005, an IDWD claims deputy issued a "corrected" determination of eligibility, finding that Payne would "not receive weekly unemployment insurance benefits" because she had left her employment "without good cause in connection with the work." (App. 8). On July 17, 2005, Payne appealed the corrected

determination – asserting that she "quit voluntarily with good 'work-related' reasons" in that her "employer arbitrarily changed the terms or conditions of [her] work." (App. 9). Payne transmitted the appeal, with an appearance form by counsel, to the IDWD by facsimile.

Apparently the hearing on Federated's appeal of the initial determination that Payne was eligible for benefits remained on the scheduled docket for August 12, 2005. Payne and her counsel appeared; Federated did not. IDWD later advised Payne that when it had "determined that the issuance of" the corrected determination of eligibility "was appropriate," Federated's "appeal was cancelled as moot." (App. 15).

The hearing on Payne's appeal of the determination that she was not eligible for benefits took place before an administrative law judge ("ALJ") on October 6, 2005. Payne testified that when hired, her supervisor – the executive managing editor, Tammy Person – had informed her that she would work approximately forty hours per week, except in case of an emergency. According to Payne, her work hours increased because the number of reporters she supervised declined. Payne also testified that the day editor's erratic schedule caused her to have to come in earlier than her scheduled time. The result, Payne testified, was that she was working from fifty-five to sixty hours weekly. Payne testified that "three or four times" in February she talked to Pearson "about the problem"; and that Pearson "agreed that there was a problem, and that she would work on getting things changed, but it didn't happen." (Tr. 9). The ALJ asked what caused her "to finally decide that in May 2005, that it was time to leave." (Tr. 17). Payne

answered, ". . . it appeared that changes wouldn't come anytime soon, and I was getting very tired . . . burned out." Id.

Pearson had interviewed and hired Payne for the position, which was salaried and not hourly. Pearson testified that she never told "her a specific number of hours" she would be working, "but said, you know, you that you might expect to be working, for example, fifty-five or sixty hours per week." (Tr. 42). Pearson further testified that Payne had never expressed to her any "concerns about staffing, the number of reporters she had," and never "complain[ed] about hours." (Tr. 45). If "Payne had come to [her]," expressed her concern about "working fifty-five or sixty hours a week," and asked for help, Pearson testified, she would have addressed that. (Tr. 57). Pearson also testified and disputed that Payne was required or needed to come in early and "was never asked to do that." (Tr. 58). Rather, according to Pearson, Payne told her that she was quitting because "she was overwhelmed." (Tr. 41).

On November 2, 2005, the ALJ mailed her decision affirming the "determination dated July 7, 2005" that found Payne had terminated her employment without good cause in connection with the work. (App. 24). The ALJ found as fact that when interviewed and hired, Payne "was not given a specific number of hours that she would work per week." (App. 23). The ALJ further found that Pearson had no memory of Payne complaining about less reporters, and Payne "was not asked to come in prior to 2:00 p.m. and it was not necessary for [Payne] to do that except that [Payne] was conscientious and wanted to do a good job." (App. 24). Finally, the ALJ noted Pearson's testimony that she did not expect Payne to work fifty-five to sixty hours a week, that Payne never spoke

to Pearson about the number of hours she was working, and that if Payne had conveyed this concern, "then Ms. Pearson would have provided assistance." Id. The ALJ then concluded as follows:

> Chapter 15, Section 1(a) of the Indiana Employment and Training Services Act provides that an individual who has voluntarily left employment must have good cause in connection with the work to avoid disqualification from unemployment benefits. There must be a reasonable effort to maintain the employer/employee relationship.
>
> It is not the purpose of the Employment Security Act to allow employees to terminate their employment merely because working conditions are not to their liking. It is when the demands placed upon employees are so unreasonable or unfair that a reasonably prudent person would be impelled to leave that the act will provide compensation. Paula A. Quillen v. Review Board, 468 N.E.2d 238 (Ind. App. 1984).
>
> There is insufficient evidence that the claimant aired her complaints to any individual in higher authority in an attempt to preserve the employment relationship. A reasonable response on the part of the claimant would have been to have aired her complaint in an attempt to preserve the employment relationship. There is insufficient evidence that doing so would have been a futile attempt on the part of the claimant to preserve her employment. A reasonably prudent person therefore would have not felt impelled to leave the employment at the time the claimant chose to do so. The administrative law judge concludes the claimant left employment without good cause in connection with the work within the meaning of Chapter 15, Section 1(a) of the Indiana Employment and Training Services Act.

Id.

Payne appealed to the IDWD Review Board ("the Board"). Therein, Payne "disagree[d]" with the ALJ's factual findings, asserting that she had been "told she would be working forty hours per week when she was hired," that she "never had" the number of reporters promised, and that she "was required to work fifty-five to sixty hours per week." (App. 4). Payne then argued that because she had been hired with the "expectation[]" that she would "be working forty hours per week," and Federated

"change[d] the terms of that agreement to sixty hours per week," this was an "arbitrary change in the terms and conditions of the work" such that a "reasonably prudent person . . . would have felt compelled to leave the employment" as Payne did. (App. 5).

On January 10, 2006, the Board considered Payne's appeal. It adopted and incorporated by reference the findings of fact and conclusions of law of the ALJ. It then affirmed the decision of the ALJ.

DECISION

1. Procedural Issues

Payne first notes that on August 12, 2005, she appeared for the hearing on Federated's appeal of the determination that she was eligible for benefits, and Federated did not. Payne argues that she should have been allowed to present evidence. She appears to contend that doing so would have produced a determination in her favor, by default. However, she cites no authority for this proposition. Moreover, Payne cannot complain that she did not have an opportunity to present her evidence and argue her eligibility – as she had that opportunity on October 6, 2005.

Payne also argues that it is "unfair to have two (2) appeals on the same issue with opposite results." Payne's Br. at 14. However, there was no "result" from the hearing *scheduled* for August 12, 2005 because, according to IDWD, Federated's "appeal was cancelled as moot" after the July 7, 2005 issuance of the corrected eligibility determination. (App. 15). Further, on September 22, 2005, IDWD set Payne's appeal of the newly issued corrected determination for hearing on October 6, 2005.

Next, Payne argues that the absence of a "full and complete record" of "the August 12, 2005 hearing" requires us to remand the Board's decision. Payne's Br. at 14. She cites Indiana Code section 22-4-17-6, which requires that a "full and complete record . . . be kept of all proceedings in connection with a disputed claim." However, the August 12th hearing was *scheduled* for the purpose of hearing Federated's appeal, and Payne's earlier argument suggests that no hearing actually occurred that day. Further, by August 12th – after the corrected eligibility determination was issued, Federated was not disputing the IDWD's decision on Payne's claim. As there was no "disputed claim," there was no need for a proceeding or a recording thereof.

Payne's arguments that the Board's determination must be reversed based upon procedural flaws must fail.

2. Board's Decision

The Employment Security Act aims to provide benefits for persons unemployed through no fault of their own. Kentucky Truck Sales v. Review Bd. of the Ind. Dep't of Workforce Dev., 725 N.E.2d 523, 526 (Ind. 2000) (citing Ind. Code § 22-4-15-1). Thus, an employee who voluntarily leaves her employment without good cause is ineligible for full unemployment benefits. Gathering v. Review Bd. of the Ind. Sec. Div., 495 N.E.2d 207, 209 (Ind. Ct. App. 1986). The question of whether an employee voluntarily terminated her employment without good cause is a question of fact to be determined by the Board. M & J Mgmt., Inc. v. Review Bd. of the Ind. Dep't of Workforce Dev., 711 N.E.2d 58, 62 (Ind. Ct. App. 1999). The employee has the burden of establishing that the termination of employment was for good cause. Id. Review of the Board's findings of

basic facts are subject to a "substantial evidence" standard of review. McHugh v. Review Bd. of Ind. Dep't of Workforce Dev., 842 N.E.2d 436, 449 (Ind. Ct. App. 2006). In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Board's findings. Id.

Payne argues that the finding by the ALJ and the Board that Payne "had failed to voice her complaints to any individual in higher authority in an attempt to preserve the employment relationship" cannot be sustained based upon the quality of the record. Payne's Br. at 18. In this regard, Payne first asserts that there are many occasions where the transcript indicates "inaudible," and that the majority of these references are when Payne was testifying. The transcript does contain places where the transcriptionist reflected that a word was inaudible. However, the quality of the transcript is more than adequate to constitute a "full and complete record" of the "proceedings in connection with a disputed claim." I.C. § 22-4-17-6. Moreover, we do not find the quality inadequate for appellate review.

Payne also argues that the record is inadequate because it fails to reflect her "critical" testimony about having "voiced her concern to [Pearson]" three or four times. Payne's Br. at 19. Payne testified that she was working fifty-five to sixty hours a week because of a reduced number of reporters and the need to come in early. She then was asked when she spoke to Pearson "about the problem," the transcript is as follows:

> A. Now, I didn't write the dates down of this. I was hoping that we could work it out. In approximately February.
>
> Q. How many times did you talk to her?

> A. Three or four times. And she agreed that there was a problem, and that she would work on getting things changed, but it didn't happen. For whatever reason (inaudible) (inaudible) (inaudible) I don't know. (Inaudible) (inaudible) (inaudible). She just continually told me that she understood, and that she agreed that things needed to change.

(Tr. 9). The transcript reflects that Payne testified that she had spoken to Pearson about "about the problem." Id.

Payne also appears to argue that the ALJ's conclusions should not be affirmed because all of her testimony was not reflected in the transcript. This implicitly suggests that in the places where the transcriptionist could not hear her words, she had specifically said that she talked to Pearson about the hours she was required to work based upon a reduced number of reporters and the day editor's schedule. However, even if this were true, there is no indication in the record that the ALJ was unable to hear Payne or her testimony. Moreover, bearing in mind our standard of review, we have already noted that Pearson expressly testified that Payne never spoke to her about having a problem with her lengthy workweeks. Payne's argument essentially asks that we assess witness credibility and reweigh the evidence – which we do not do. See McHugh, 842 N.E.2d at 449.

Pearson's testimony supports the finding by the ALJ, adopted by the Board, that Payne had not approached Pearson to make a "reasonable effort . . . to maintain the employer/employee relationship." (App. 24). Further, unemployment compensation benefits are provided to a claimant who has voluntarily terminated employment "only when demands placed upon an employee are so unreasonable or unfair that 'a reasonably prudent person would be impelled to leave.'" Kentucky Truck Sales, 725 N.E.2d at 526 (citation omitted). While the evidence may be in conflict, there is evidence in the record

that Payne was a salaried employee who (1) had been informed that the position might require occasional fifty-five to sixty hour workweeks, (2) chose to come in earlier than required, and (3) did not express to the employer a dissatisfaction with that arrangement. This evidence supports the Board's conclusion that there were no "unreasonable or unfair" demands placed upon Payne under the circumstances that would impel a "reasonable and prudent" person to leave such employment. Kentucky Truck Sales, 725 N.E.2d at 526. Therefore, we find no error.

Affirmed.[1]

NAJAM, J., and FRIEDLANDER, J., concur.

[1] Payne's motion to stay the order of repayment is denied.